IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 188 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KESAR ENTERPRISE PROPRIETORY CONCERN - Petitioner(s)
Versus
BINDAL PROTEINS PVT. LTD. - Respondent(s)

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Appearance :
MR SAURABH G AMIN for Petitioner(s) : 1,
MR VIMAL M PATEL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/03/2007

ORAL JUDGMENT

1.This company petition has been filed by the petitioner i.e. Kesar Enterprise under Sections 433 and 434 of the Companies Act for an

appropriate order of winding up of the respondent company i.e. Bindal Proteins Pvt.Limited under the provisions of the Companies Act, 1956.

2.It is the case on behalf of the respondent company that towards the goods supplied to the respondent company and amount of Rs.16,66,500/- was due and payable by the respondent to the petitioner as on date of statutory notice dtd.21.07.2006. It is submitted that inspite of repeated request and demand as aforesaid amount was not paid, the petitioner company served the statutory notice upon the respondent company as required 434 of the Companies Act, 1956 by notice dtd.21.07.2006 and called upon the respondent company to make the payment.

3.It is submitted that the said statutory notice was served upon the respondent company and a formal reply was given on behalf of the respondent company dtd.25.07.2006 submitting that the statutory notice has been received by them. However, at present their financial position is not sound, therefore, it is not possible for them to make payment. However, it

was requested not to initiate any proceedings. It is further submitted that thereafter neither there was any reply to the statutory notice nor any payment was made within 21 days, and, therefore, the petitioner preferred present company petition for appropriate order of winding up of respondent company by submitting that respondent company is not in a position to pay dues to his creditors inclusive of the petitioner and has lost his substratum, and, therefore, the same is required to be ordered to be wound up. It is also further submitted by learned advocate for the petitioner that even there is no reply to present company petition also.

4. Shri Vimal Patel, learned advocate appearing for the respondent company is not in a position to dispute that dues are not admitted. He is also not in a position to dispute that even after receipt of the statutory notice the amount has not been paid. He is also not in a position to dispute that there is no reply to even the present company petition.

5. It is not in dispute that goods were supplied by

the petitioner to the respondent company and the same has been consumed and there is no disputed raised by the respondent company at any point of time either qua quality or price. An amount of Rs.16,66,500 is due and payable on the date statutory notice dtd.21.07.2006. The said statutory notice has been served upon the respondent company which has been acknowledged by the respondent company in its formal reply dtd.25.07.2006. In the formal reply dtd.25.07.2006, the respondent company has never disputed the claim of the petitioner. It is admitted by the respondent company that financial position of the respondent company is not sound and therefore, it is not in a position to make payment. Thereafter, present company petition has been filed and even there is no reply to the present petition. After receipt of the statutory notice the entire amount has not been paid within 21 days.

6. Under the circumstances, presumption with regard to inability to make the payment as per Section 434 (i) (a) can be raised. Even otherwise apart from the statutory presumption with regard to

inability to make the payment, there is an admission on the part of the respondent company in the reply dtd.25.07.2006 with regard to their inability to make the payment.

7. Admission and final hearing of the present petition was advertised in two local newspapers as per the order dtd.08.12.2006 and affidavit to that effect is also filed. Nobody has objected to the reliefs sought in the present company petition.

8. Under the circumstances, the respondent company is not in a position to make the payment of its dues to creditors inclusive of the petitioner and has lost its financial substratum and under the circumstances the respondent company is required to be ordered to be wound up.

9. For the reasons stated above, the respondent company i.e. Bindal Proteins Pvt.Limited is ordered to be wound up.

10. The Official Liquidator attached with this Court is appointed as Official Liquidator for the respondent company. The Official Liquidator is hereby directed to take possession of the property (movable and immovable) of the

respondent company along with its bank accounts, cash and accounts books etc. The Official Liquidator shall submit his report within a period of three months. If required, he can take services of the Official Valuer for the purpose of preparation of possession note etc. No costs.

(M.R.SHAH, J.)

Amit/-